

DEPARTMENT OF STATE REVENUE

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LETTER OF FINDINGS NUMBER: 94-0070 CS
Controlled Substance Excise Tax
For The Period: 11-24-93

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ISSUES

I. Controlled Substance Excise Tax — Imposition

Authority: U.S. Bankruptcy Code §507, 523; IC 6-7-3-5

Taxpayer protests the imposition of the controlled substance excise tax on his possession of marijuana.

STATEMENT OF FACTS

On November 24, 1993 taxpayer was arrested in Lawrence County, Indiana for possession of marijuana. On November 27, 1993, after a subsequent search of taxpayer's vehicle and home, the Department assessed the controlled substance excise tax against taxpayer calculated on 1,430.7 grams of marijuana. The jeopardy assessment consisted of \$57,228.00 base tax plus a one hundred percent penalty. Taxpayer protests this imposition of the controlled substance excise tax. Additional facts will be provided below as necessary.

I. Controlled Substance Excise Tax — Imposition

DISCUSSION

The jeopardy assessment notice and demand were made by the Department against the taxpayer on November 27, 1993. Taxpayer filed a personal bankruptcy on April 29, 1994. Taxpayer claims the controlled substance excise tax assessment was discharged in his personal bankruptcy and submits a signed order of "Discharge of Debtors" as evidence. However, this order removes from the discharge any debts which are nondischargeable pursuant to Section 523(a)(1) of the Bankruptcy Code.

Section 523 (a)(1)(A) of the Bankruptcy Code reads:

(a) A discharge under section 727, 1141, 1228(a), 1228(b), or 1328(b) of this title does not discharge an individual debtor from any debt -

(1) for a tax or a customs duty -

(A) of the kind and for the periods specified in section 507(a)(2) or 507(a)(8) of this title, whether or not a claim for such tax was filed or allowed;

Pursuant to Section 507:

(a) The following expenses and claims have priority in the following order:

(8) Eighth, allowed unsecured claims of governmental units, only to the extent that such claims are for --

(E) an excise tax on -

(i) a transaction occurring before the date of the filing of the petition for which a return, if required, is last due, under applicable law or under any extension, after three years before the date of the filing of the petition;

(ii) if a return is not required, a transaction occurring during the three years immediately preceding the date of the filing of the petition;

The assessment of the controlled substance excise tax occurred during the three years immediately preceding the taxpayer's petition for bankruptcy and falls under the provision §507(a)(8)(E)(ii). Pursuant to §523, as stated above, such tax assessment is not dischargeable.

Alternatively, the taxpayer argues the search and seizure of the marijuana was subsequently found to have been illegal by an United States District Court during criminal proceedings and, therefore, the evidence of taxpayer's possession of such substances should be suppressed in this administrative matter.

The Controlled Substance Excise Tax is a voluntary compliance tax. The Department assesses the tax, plus penalty, against those found to possess, manufacture or deliver such substances without first remitting the tax (IC 6-7-3-5). The tax is a civil action which is pursued by the Department. As such, the findings of the taxpayer's criminal proceedings have no bearing on the Department's administrative process of enforcing and collecting this tax.

FINDING

Taxpayer's protest is denied.